

Pssst! Here are a few things you need to know... Part 2

Because of some recent discussions between LEA and LPS, here are a couple more items about which we thought members needed to know. These pieces of information are in addition to the “Comments, Concerns, and Announcements” and the responses to them that members can and should read in the monthly minutes from the LEA Faculty Representative (FR) Council which records issues brought to the Association’s attention via our diligent LEA building representatives.

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Tape Recording by LPS Risk Management

Members need to be aware of the fact that when they call Risk Management at LPSDO or receive a call from that department regarding a Worker’s Compensation claim or a job-related injury, the phone conversation could be recorded and eventually transcribed. Legally, LPS does not have to inform members that the District is recording the session. LEA has had a number of discussions with the District regarding this practice and has also sought a legal opinion regarding it.

Most citizens operate under the understanding that it is unlawful for one person or party to secretly tape record another person’s telephone call and discussion without at least informing the other party in advance that they are being recorded. These privacy protections were first created in federal law in 1986. Unfortunately, what many people are not aware of is that there is a giant loophole in both federal and state laws regarding such covert recording. According to NSEA legal research, acts regarding tape recording of telephone conversations at both state and federal levels provide that:

“It shall not [editorial emphasis] be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortuous act in violation of the Constitution or laws of the United States or any State.”

In other words, when a member is having a telephone discussion with an LPS representative and the LPS representative knows the discussion is being recorded, the LPS representative has in fact consented to the recording being made and, hence, the exception or loophole that allows making “covert recording lawful.” NSEA lawyers conclude “that nothing within state or federal law prohibits LPS representatives from covertly recording conversations with employees provided the representatives who are making the recording are parties to the communications being recorded.”

LEA members do not have to be told, and their permission does not have to be sought for a recording of their conversation/discussion to be made.

Additionally, court cases have determined that “these recorded conversations can be used in hearings and legal proceedings to the same extent and under the same criteria as the introduction of any other evidence.” Hence the old saying, “Anything you say can and will be used against you” remains true—even of recordings made without your knowledge or consent.

So, what should an LEA member do?

- LEA always advises members, at a minimum, to be aware that their phone conversations can and might be taped without being so advised by the LPS representative ahead of time, and to proceed with any discussion with an LPS representative accordingly.

- ✚ LEA always advises members to consult with LEA professional staff before having a telephone conversation or meeting with an LPS representative if the member is contacted to discuss a situation—be it a situation regarding one’s employment, an accident or incident that has taken place at a work site, any health plan accommodations, or a Worker’s Compensation claim.
- ✚ Members have the right to have LEA professional staff with them at any such meeting and having such representation present is recommended in all but mundane, routine cases.

Finally, in a follow-up to the legal opinion received by LEA from NSEA legal counsel, the attorney supplying LEA with his legal opinion added the following (**which LEA believes members need to take to heart**): “an employee should always assume that *all conversations with supervisors are ‘on the record’*” [editorial emphasis].

LEA believes and legal counsel has concurred that members need to be aware of the above situation and be sure that when they are on the phone to Risk Management officials that the information being shared is complete and accurate.

LPS has, with LEA's urging, added language informing staff in the HR #2 Bulletin regarding Workers Compensation, that such tape recording may be conducted.

Retired, Returning to Active Teaching in LPS, and Disability Insurance

Beginning in 2006 all new certificated hires must purchase Disability Insurance when employed by the Lincoln Public Schools. This is by mutual agreement between LEA and LPS as part of the *Professional Agreement*. This year, however, it was brought to our attention by an astute member, that there was a problem for employees who have retired from the system who then return to teach while receiving retirement benefits through the Nebraska Public Employees Retirement System. Because of language in the coordination of benefits segment of the disability insurance policy that LPS has employees purchase, if a person is receiving retirement benefits from the state or through Social Security and the employee becomes disabled, disability will not pay out benefits to the individual. Yet, having had a break in service, retired individuals found themselves being treated as “new hires” and were having to purchase disability insurance. In other words, for those already receiving retirement income, they were purchasing a benefit (disability insurance) from which they could not benefit! Working with LPS, LEA has secured a Memorandum of Understanding that exempts people returning to active teaching after retirement from having to purchase disability insurance if they can prove to the District that they are receiving retirement benefits. The Memorandum of Understanding goes into effect as of November 1, 2008. Affected individuals should contact Kyla Jensby in Human Resources (ext. 1593) so that they can drop their disability insurance requirement if they so desire. Past payments for the disability insurance cannot be refunded because that money has already gone to the insurance company, Jefferson Pilot Financial, to purchase disability insurance.

COPING WITH DIFFICULT PEOPLE: # 4

From **SHERMAN TANKS**, **SNIPERS**, and **EXPLODERS** we move on to the **COMPLAINERS**. *Luckily, none of us know anyone like this, right?!* This article has been revised from information from Robert M. Branson from the homepages of wmich.edu.

THE COMPLAINER is a whiner who self-righteously blames and accuses others. They are irritating, irksome, and very exhausting. **COMPLAINERS** manage to find fault and gripe about everything.



They point out real problems but they do it in a manner that elicits placating or defensive responses from others. They are powerless and prescriptive and perfect. They feel powerless in the management of their own lives, always know how things "ought or should be," but avoid direct action and wish that "someone" would correct all the problems. **COMPLAINERS** persist in blaming and accusing others because they gain self validation as "good" people twice: first, by placing the responsibility for the ills they observe on others, and secondly, having done that, they are comparing their relative "goodness" to the "badness" of others. While **COMPLAINERS** do get attention, they seldom get action from others. Impatience, patronizing dismissal, over solicitous personal attention, or simply avoidance are their lot. *And they do grow wearisome... so wearisome!*

So how do you cope with COMPLAINERS?

1. Listen attentively to their complaints even if you feel guilty or impatient. Why? Here are four reasons:

- ✚ It allows them to let off steam and, hopefully, move onto more constructive problem-solving.
- ✚ Being heard can lessen their sense of being "dismissed" and feeling powerless.
- ✚ It provides you with information that you'll need in order to carry out the next coping step.
- ✚ You may even discover that the person who is complaining to you is merely looking for a sympathetic ear and not really a complainer at all.

2. Acknowledge them by using active listening plus reflect on the content of their remarks. Reflection lets you know that you have listened and understood what they've said—that you know how they feel and that you take them seriously.

3. Be prepared to interrupt. To acknowledge, you may have to interrupt their seemingly endless verbiage. Once you've discovered the gist of their complaints, stop them politely, but firmly, by taking control of the structure of the conversation. Who speaks when and about what lessens the "value" of complaints to the complainer.

4. Use limiting responses. **COMPLAINERS** love words like "never" and "always" (i.e., "You never call me" or "Your work is always late.") You help them to gain more of a problem-solving perspective, which is a part of your goal, when your acknowledgments are made in a way that pins them down to specific times, places, or facts.

5. Don't agree. Your admission to **COMPLAINERS** that you are agreeing or that you are at fault is not only likely to be taken as a sign of submission, but that you are also confirming their belief that you have the power and responsibility to solve the problems that they are pointing out. You validate for them the fact that, indeed, it's all your fault and they are blameless.

6. Avoid the accusation. Defend yourself.

7. State facts without comment and apology.

8. Switch to problem-solving. Problem-solving focuses on what's to be done to make things better in the future. **COMPLAINERS** reminisce about the history of a problem and assign blame. Therefore, pose specific problem-solving questions (i.e., "who, what, when, where" questions, but not "why" questions.)

If nothing else, make sure you have some good cheese to go along with the whine!

